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PRIVACY ISSUES IN THE WORK PLACE

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I. INTRODUCTION

Managing employees has always been complicated and is becoming even more so with the increasing use of technology in the workplace and a corresponding increase in the recognition of individual privacy rights. With technology, employers are able to track the activities of their employees both on and off duty. As well, local governments are subject to the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), which recognizes that information about employees is their personal information and sets out limits on a local government's ability to collect, use and disclose that information. Areas which will be discussed in this paper are the use of medical information, drug and alcohol testing, GPS technology, and employee use of workplace technology.

II. FIPPA OBLIGATIONS

Personal information is defined in FIPPA as information about an identifiable individual other than their business contact information. Therefore, information about employees is subject to Part 3 of FIPPA, which sets out a public body's protection of privacy obligations. Under section 26 (1) of FIPPA, a local government can only collect personal information in certain circumstances, one being information necessary for a program or activity of the local government (section 26(1)(c)). This would include the management and supervision of its employees.

Local governments are generally required to collect information directly from the employee (section 27 (1)). However, there is an exception when the collection of information is necessary for the purposes of managing or terminating the employment relationship (section 27(1)(f)). It is important to note that where local governments do not collect information directly from the employee, such as during an investigation into misconduct, a local government will need to show that its method of collection was reasonable in the circumstances and done in the least privacy intrusive manner.

Section 32 of FIPPA sets out limits on a local government's ability to use personal information it has collected about employees as follows:

> "**Use of personal information**
>
> 32 A public body may use personal information in its custody or under its control only
>
> (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose (see section 34),

(b) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the use, or

(c) for a purpose for which that information may be disclosed to that public body under sections 33 to 36."

Section 33 also limits a local government's ability to disclose an employee's personal information. However, local governments can disclose information they have collected about a particular employee to their officers and employees if the information is necessary for the performance of their duties (section 33.2(c)).

A. Medical Information

Medical information is one of the most sensitive types of personal information that will be collected by an employer. Therefore, employers must be cautious with respect to their collection, use and disclosure of medical information. Employers are not permitted to simply disclose medical information about an employee to other employees. It must only disclose such information to those employees who require the information for legitimate business purposes. Furthermore, employers must ensure that they properly safeguard all medical information collected about employees.

There are competing rights between employers and employees with respect to the provision of medical information. On the one hand, employers want to obtain medical information to ensure that sick leave is being used properly and to assist in their obligation to provide a safe workplace and in the duty to accommodate. Employees, on the other hand, have privacy rights in their personal medical information.

It is recognized that employers have the right to medical information in the appropriate circumstances. The employer's right to medical information for legitimate business reasons is always balanced against an employee's privacy rights. The areas in which these conflicting rights come into play include the following:

- When can the employer request medical information?;
- What information is the employee entitled to?;
- Can the employer insist that the employee be sent for an independent medical examination?; and
- Requests for accommodation.

For union employees, there are often limits set out in the collective agreement regarding an employer's right to request medical information. In *Telus Communications Co.* (2010), 192 L.A.C. (4th) 240 (Lanyon), the Arbitrator reviewed the general principles regarding the provision of medical information and an employee's right to privacy. The starting point in this analysis is

the conflict between the privacy rights of employees and the legitimate business interests of employers with respect to the disclosure of medical information and medical examinations. While employers do have the authority to request medical information in some circumstances, employers must be aware of the limits to those rights as well as the privacy rights of employees.

This case concerns Telus' particular policies and collective agreement provisions but it provides a useful review of some of the basic principles in this area. The first principle is that an employer has no management right to demand a medical examination or the disclosure of medical information. This authority must be found in the collective agreement or by statute. The Arbitrator also noted the basic principle that privacy is one of the core values underlying the protections established in the *Canadian Charter of Rights and Freedoms*.

However, the Arbitrator also set out the principle that employees are obligated to attend at work and made the following comments:

> "If they are absent from work there is an onus on them to establish that they have a bona fide illness or injury and that the length of their absence is also legitimate. The primary means of proof is usually a medical certificate. The benefits under a health and welfare plan are contractual and there is an onus on the employee to prove that they meet the criteria established for entitlement…."

The Arbitrator confirmed that if an employer has reasonable grounds, it may require an employee to provide further additional medical information and noted the following:

> "For example, many employees may simply submit what is now universally recognized as insufficient medical information, that is, a prescription pad note from their family doctor stating, "off work due to illness; return to work unknown"."

Employers must use the least intrusive means possible to obtain the medical information required. Employers have a right to more detailed medical examinations and information in respect of issues such as fitness to return to work and accommodation situations.

Regardless of an employer's right to medical information, it is up to the employee to decide whether the employee will consent to provide the requested information. However, the Arbitrator was clear that an employee who refuses to do so will suffer the consequences such as not being entitled to sick benefits, being prohibited from returning to work, or not being accommodated. While the Arbitrator was clear that an employee cannot be disciplined for refusing to consent to providing medical information, they may face consequences for the conduct which flows from that decision such as abuse of sick leave or a refusal to return to work.

More recently, the issue of whether an employer can require an employee to attend an independent medical examination was reviewed in West Vancouver (District), [2012] B.C.C.A.A.A. No. 166 (Hall). Again, the analysis in this case is based on the District's collective agreement but the Arbitrator reviewed previous case law on the issue of employer access to medical information and set out the following general principles:

- an employer can only request medical information, thereby intruding on an employee's personal privacy, if the employer has a legitimate business purpose tied to that relationship;
- an employer has a continuing right to inquire into an employee's absence from work and an employee has a continuing obligation to account for any absence, including those due to illness or injury;
- an employer is entitled to require employees to provide particulars of absences due to illness or disability and in general, is entitled to request sufficient information to ensure the illness or disability is genuine and to determine the impact on an employee's attendance;
- unilaterally imposed sick leave or attendance management policies must be reasonable and consistent with the terms of the collective agreement;
- employers must protect employee privacy rights and ensure medical information is not distributed more broadly than is reasonably necessary; and
- there is general arbitral acceptance of questions concerning "routine information" such as the nature of an employee's injury or disability rather than a diagnosis, the prognosis and the expected date of return to work. Arbitrators have also typically allowed inquiries as to whether a course of treatment has been recommended and is being followed by the employee.

The issue of medical information also arises in the human rights context, most generally with respect to issues of accommodation. The Human Rights Tribunal has confirmed that "…the law is well-settled that there is nothing inherently discriminatory in requesting a doctor's note to substantiate an employee's request for sick leave" (*Stewart v. Brewers Distributor Ltd.*, 2009 B.C.H.R.T. 376 at para. 48).

Employees are required to cooperate with employers to facilitiate any requests for accommodation in the workplace. This includes providing employers with the information necessary to determine what accommodation, if any, an employer can reasonably provide in the particular circumstances. In *Yaremy v. Vancouver (City)*, 2011 B.C.H.R.T. 280, an employee claimed, among other things, that he was harassed by City personnel in their requests for medical support documentation regarding his absences from work on sick leave. The Tribunal found that the employee "…actively sought to thwart the City's efforts to return him to the

workplace" (at para. 23). In assessing the reasonableness of the employer's conduct in regards to its requests for medical information, the Tribunal made the following comments at para. 23:

> "The City's efforts to obtain medical documentation for accommodation purposes, have him sign a release allowing OHI (the City's chosen agent for disability management) direct access to his physicians, and have him provide medical documentation to support his absences from work, are all within their rights as his employer and to be expected. It was equally within Mr. Yaremy's rights not to sign the ROI as initially presented to him, but that does not make asking him to sign it in its original form discriminatory conduct. The activity described, in the circumstances outlined by all of the material, including that of Mr. Yaremy, would not support a finding of detrimental treatment."

One of the issues in *Holt v. Coast Mountain Bus Co.*, 2012 B.C.H.R.T. 28, was the employer's right to seek further medical information in relation to determining whether the employee had a disability and, if so, what accommodations might be available. The Tribunal agreed that the employer had a right to request further medical information based on the previous information it had received. Given that the employer's requests were reasonable, the Tribunal found that the employee was not justified in refusing the employer's efforts to pursue answers to its medical questions. As well, the employee was not justified in withdrawing his consent to provide medical information. As noted by the Tribunal at para. 216:

> "It is vital to the process of identifying disabilities, and any necessary accommodation, that both parties arm a health professional asked for an opinion about an employee's ability to do specific work with accurate, even-handed information. It is also important that they air and resolve disagreements about the value of the referral, the questions asked, and the relevance and accuracy of the information provided, at an early stage, rather than resort to mutual obstruction and obfuscation, as happened too frequently in this case."

Furthermore, the Tribunal has confirmed that it is the employer's responsibility to ensure safety in the workplace. In the case of *Taylor v. New Westminster (City)*, 2009 B.C.H.R.T. 139, the City had terminated the employment of an employee who had addiction issues because he refused to agree to further monitoring as medically recommended. The employee alleged he was dismissed because of his addiction and the City had not met its duty to accommodate. The Tribunal agreed that the City had met its duty to accommodate when it accepted the medical recommendation in relation to the employee and did not discriminate against the employee by relying on the requirement set out by his doctor that he must agree to further monitoring.

B. Drug and Alcohol Testing

Drug and alcohol testing is another significant and evolving issue in workplace privacy. Canada's top court, the Supreme Court of Canada, recently clarified the circumstances in which an employer may conduct drug and alcohol tests.

In *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper Ltd*, 2013 SCC 34, the company instituted a policy of universal, random drug and alcohol testing for workers in positions designated as "safety sensitive." The union challenged the portion of the policy that each year required 10% of all employees in safety sensitive positions, randomly selected, to submit to a breathalyser test. The employer stated that it instituted the regime to enhance safety at the mill. However, the evidence indicated that there were only eight documented instances of alcohol consumption or impairment in the workplace over a period of 15 years, and no accidents, injuries, or near misses had been connected to alcohol use. By the time the grievance was heard, the policy had been in place for 22 months and no one had tested positive.

The arbitrator held that management had overstepped its rights under the collective agreement by imposing the policy in the absence of a serious workplace problem with alcohol use. Upon judicial review, the court of the New Brunswick Queen's Bench found the policy was justified given the dangerousness of the workplace. The New Brunswick Court of Appeal agreed.

However, the Supreme Court of Canada agreed with the arbitrator. The court first highlighted that such a policy must balance the legitimate interests of the employer in maintaining a safe workplace against the privacy rights of employees. The SCC said that random alcohol and drug testing, by urine, blood, or breath samples, constitutes a significant intrusion of employees' privacy rights. The SCC also noted that the expected safety gains from such a policy were uncertain to minimal. The SCC held that the arbitrator had not erred in concluding that the evidence did not establish that there was a sufficient general problem of substance abuse in the employer's workplace to justify a regime of random alcohol testing.

The SCC clarified that there are only four situations in which an employer may test employees for alcohol and drug use:

- there is reasonable cause to believe that an employee is impaired while on duty;
- an employee is involved in a significant workplace accident or near miss;
- an employee is returning to work after treatment for substance abuse; or
- a significant recognized problem of substance abuse exists in the workplace.

With regard to the fourth justification, in the wake of *Irving,* it will be only very limited circumstances in which an employer may impose random alcohol and drug testing. To justify

such a policy, employers will need to provide concrete evidence that a substance abuse problem exists in a dangerous workplace, and that the expected safety gains flowing from such a policy will be more than minimal. The SCC commented that such a regime could be permitted in extreme circumstances, such as where the employer could provide compelling evidence of an "out-of-control drug culture taking hold in a safety sensitive workplace."

1. Reasonable suspicion

An employer may ask an employee to take a drug test where the employer has reasonable cause to suspect the employee is impaired at work. But what constitutes reasonable cause? In *Halifax (Regional Municipality) v. CUPE, Local 108*, 2013 NSSC 164, the Supreme Court of Nova Scotia reviewed the decision of an arbitrator to reinstate a grievor following his termination for refusing to take a drug test and not cooperating its investigation. The grievor was a labourer with the City of Halifax highways department. One afternoon, while in their City-provided truck, the grievor and a fellow employee were approached by their supervisor. The supervisor noted that he smelled marihuana in the cab, but let them return to their duties and after warning them to drive safely.

Later that day, the grievor and his coworker were called to a meeting and asked to take a drug test. The grievor refused, saying that he was a recreational user of marihuana and therefore he would fail the test. The coworker took and failed the test. Later, the two were called to a second meeting at which they were asked questions about their drug use. The grievor was uncooperative and stated that his off-duty drug use was of no concern of his employer. The employer then terminated the grievor.

The employer's policy required employees in safety sensitive positions to submit to testing if a supervisor had reasonable cause to suspect an employee of drug or alcohol use. The supervisor's determination was to be based upon observations or evidence of the use of a substance, erratic behaviour, uncoordinated walking, staggering, weaving, and changes in speech patterns. The policy was concerned with workplace impairment; testing was not engaged by off-duty behaviour or casual drug use.

At arbitration, the evidence of the grievor's alleged drug use was found to be very weak. The arbitrator noted that none of the indicators of drug impairment referred in the policy were present. The arbitrator found that the employer's reliance on the smell of marihuana to establish drug use, without making further inquiries was unreasonable. The arbitrator also gave little weight to the grievor's demeanor and attitude upon being confronted, saying it "likely illustrates his usual temperament, in a stressful situation." Furthermore, the arbitrator held that the refusal to take a test was not a ground for termination because no evidence was submitted that confirmed the grievor was impaired at work. On the contrary, the evidence established that marihuana smoked on the weekend could test positively on the work days that followed. Lastly, the arbitrator found fault in the employer's argument that he could be dismissed for refusing to submit to drug counselling. The policy only required drug-dependent employees to undergo counselling, and the evidence fell far short of establishing the grievor

was drug dependent. The arbitrator reinstated the grievor and the Supreme Court upheld that decision.

This case indicates that more than the smell of drugs or alcohol is required to justify asking an employee to take a drug or alcohol test. An effective policy should list many indicators of impairment, and at least one of those indicators must be present to discipline an employee for refusing to take a drug test. Furthermore, discipline for failing to take a drug test is unlikely to be upheld at arbitration where there is little evidence to support suspicion of impairment. Refusal to take a test in such circumstances cannot simply be deemed a positive result.

2. Post-incident testing

Alcohol and drug testing is also justified following a significant workplace accident or near miss. In *Irving*, the Supreme Court of Canada referred with approval to the employer's policy in *Imperial Oil Ltd and CEP, Local 900*, [2006] O.L.A.A. No 721 (Picher), which required testing after all significant accidents, and left discretion to management for less serious incidents. However, management must be careful in determining what constitutes a significant accident or near miss.

In *Fording Coal Ltd v. USWA, Local 7884*, [2003] B.C.C.A.A.A. No 189 (Devine), the grievor was required to take a drug test following an incident in which he damaged the employer's truck by driving over a rock at night. The arbitrator allowed the grievance because there was no apparent safety issue and the property damage was not sufficient to constitute a significant event. The arbitrator also noted that the employer's investigation of the incident was inadequate and the accident had potentially been caused by environmental conditions rather than impairment.

In *Elk Valley Coal Corp v. USWA, Local 9346*, [2005] B.C.C.A.A.A. No 50 (McPhillips), the grievor brushed her truck up against a parked vehicle, leaving scratches on the bumper. The employer decided to administer a drug test because it felt the potential for injury and loss was significant. The grievor took and passed the test, and then filed a grievance. The arbitrator said that such an incident was not significant, and would not justify a drug test.

In *Weyerhauser Co v. CEP*, Local 447, [2006] A.G.A.A. No 48 (Sims), the arbitrator held that to constitute a near miss, there must be sufficient gravity and potential consequences attached to an incident, and that testing must only occur after a thorough investigation.

Therefore, post-incident alcohol and drug testing will not be permitted following an accident which causes trivial damage or does not endanger employees or others. Nor will it be permitted where a near accident would not have resulted in significant consequences or a threat to the safety of employees or others. Lastly, it should not be conducted unless a post-incident investigation reveals that impairment, rather than environmental conditions, was the likely cause of the accident.

3. Off-duty consumption

When can an employer discipline an employee for off-duty use of drugs or alcohol? One of the problems with current drug-testing technology is that a positive post-incident test does not on its own indicate impairment at work. However, a positive test in addition to other evidence can be used to draw an inference of impairment.

In *Fording Coal Ltd v. USWA*, Local 7884, [2001] B.C.C.A.A.A. No 173 (Devine), the grievor was caught with marihuana at the workplace and the urine test revealed high concentrations of marihuana. Expert evidence established that it was very likely that the grievor had smoked marihuana 24 hours prior to the incident. At arbitration, the grievor admitted to smoking marihuana during the day prior to his night shift. The arbitrator held that although the evidence did not confirm the grievor was impaired at work, it raised reasonable concerns about the grievor's ability to work safely. The arbitrator upheld the grievor's termination.

In *Elk Valley Coal Corporation v. IUOE, Local 115*, [2004] B.C.C.A.A.A. No 249, high levels of marihuana were found in the grievor's system following an accident. The grievor admitted to smoking marihuana until 11:00 PM the night before his 8:00 AM shift. Again, the arbitrator upheld the grievor's termination.

The jurisprudence shows that off-duty drug and alcohol use may cause impairment at work, but an employer may need more evidence than a positive test to impose discipline. Possession of alcohol or drugs or a significant accident, when combined with a positive drug test, should justify imposing discipline.

For local governments considering implementing a drug and alcohol testing regime for employees in safety sensitive positions, the decision in *Irving* clarifies the situations in which testing is permitted. A drug testing program must be enshrined in a policy, and that policy clearly communicated employees. Also, local governments must remember that even if a testing policy is lawful and an employee fails a test and is disciplined, the employee may grieve the termination on the basis that he or she is addicted to alcohol or drugs and his or her termination constituted discrimination on the basis of mental disability. However, that is a discussion for another day.

C. GPS monitoring

Local governments may be interested in implementing GPS tracking systems in their corporate vehicles. GPS technology is an effective way to verify that employees are operating vehicles safely and only for authorized purposes. It can also be used to monitor employee performance. However, as the following cases illustrate, the collection and use of information from GPS tracking systems engages significant privacy concerns.

In Order P12-01; *Schindler Elevator Corporation*, [2012] B.C.I.P.C.D. No 25, employees of an elevator company complained that the company violated their privacy rights by monitoring their use of the company's service vehicles. The employees drove the vehicles directly from

their homes to job sites. The technology recorded the location and the manner in which the vehicles were driven, including start and shut off times, distance travelled, speed and sharpness of acceleration and braking. The employer stated that the purpose of collecting the information was to manage employee performance and safety. In addition, the employer's GPS policy stated that the employer did not monitor vehicle use in real-time - the information was only used to generate reports when concerns arose regarding an employee's performance or use of a vehicle. The employees complained that the information was personal information and its collection contravened the *Personal Information Privacy Act* ("*PIPA*"), which regulates the privacy rights of employees of private organizations.

The Office of the Information and Privacy Commissioner ("OIPC") found that the information was personal information because it revealed information about the person driving the vehicle. However, she found the collection lawful because it was collected for legitimate and reasonable business purposes: to manage productivity and hours of work and to ensure employees drove safely and lawfully. The Commissioner said:

> "A business is entitled to ensure, subject to applicable laws and agreements, that its employees meet productivity standards. It is also a reasonable purpose for a business to collect personal information to ensure that its employees are actually working the hours for which they are paid. It is, at least reasonable for a business to be able to ensure that its employees are, in the course of their employment, driving company vehicles lawfully and with reasonable care. I therefore find that the information is collected for purposes reasonably required to manage an employment relationship."

However, the Commissioner warned that if an organization were to engage in continuous, real-time monitoring of employees' whereabouts during or outside work hours for employment management purposes she "would look particularly carefully at the situation." This warning has been repeated in all four of the OIPC's decision on the use of GPS tracking technology, including the following case.

In Order F13-04; *University of British Columbia*, [2013] B.C.I.P.C.D. No 4, the Commissioner considered the collection and use of information via GPS technology under FIPPA. UBC had installed GPS technology in patrol vehicles used by Campus Security and had formulated a policy on the use of GPS technology. The technology recorded information concerning the location, movements, speed and ignition status of patrol vehicles. The union's complaint alleged the information was personal information and was collected in contravention of the *FIPPA*.

Under section 26(c) of the *FIPPA*, a public body is entitled to collect personal information if the information relates directly to and is necessary for a program or activity of the public body. At the hearing, the Commissioner accepted UBC's argument that the information was collected for employee safety, patrol dispatch efficiency, and maintenance purposes, which all related to campus security and the management of UBC's employment relationships. The union alleged

that UBC intended to use the information as a performance management tool by constantly monitoring the location of employees. The Commissioner agreed that the collection and use of the information related to UBC's programs and activities.

UBC argued that the information was necessary. The Commissioner noted that prior OIPC decisions on section 26(c) have expressly declined to interpret "necessary" as synonymous with "indispensable." Instead, to determine whether the collection of information was necessary for UBC's programs or activities, the Commissioner considered the sensitivity and amount of the information in light of the purpose for collection. The Commissioner decided the personal information collected was not overly intrusive – it related merely to the details of how employees operated vehicles, and was only focussed on activities during working hours. The Commissioner also noted with approval that the GPS technology was not used to actively monitor employee performance or conduct – it was resorted to only after UBC learned of incidents through other means. The Commissioner concluded that the information collected was necessary for the purposes of employee safety, dispatch efficiency, vehicle maintenance and investigation of employee vehicle use. However, the Commissioner repeated her warning from *Schindler* – had UBC engaged in continuous real-time monitoring of employees her conclusion may have been different.

If a local government is considering implementing a GPS tracking system, it should ensure that the reasonable purposes for doing so relate to its programs and activities. Reasonable purposes may include protecting, maintaining and managing assets; improving efficiency or quality of service; ensuring the safety of employees and the public; ensuring proper, and lawful use of vehicles; and managing employee productivity and hours of work. GPS tracking systems must also be necessary for achieving those purposes.

It is also important to have a policy in place. A GPS policy should state the purposes of collecting the information and relate those purposes to other policies concerning corporate vehicle use and employee conduct. Second, employees and unions should be given notice of the policy. Lastly, in light of the Commissioner's warning, the policy should clearly state that employees will not be continuously monitored. Real-time monitoring would likely constitute an unlawful breach of privacy.

D. Privacy and work-issued devices

Local governments that provide electronic devices to employees and elected officials should be aware that employees may have privacy rights in the information contained on those devices. In *R v. Cole*, 2012 S.C.C. 53, the Supreme Court of Canada examined the privacy rights of an employee in a work-issued laptop computer. In *Cole*, an Ontario school teacher was charged with possession of child pornography. A school technician performing maintenance on the teacher's work-issued laptop discovered images of one of the school's students. The technician notified the principal and copied the photographs to a compact disc. The principal seized the laptop and gave the evidence to the police.

The teacher argued that the evidence should be excluded because the police's search of the laptop constituted a privacy violation which infringed his rights under the *Canadian Charter of Rights and Freedoms*. The teacher alleged that he had a reasonable expectation of privacy in the information contained on the laptop, and the police infringed that right by searching it. In determining whether the teacher had a reasonable expectation of privacy in the laptop, the court considered the employer's policy and the ownership of the laptop and the information contained in it. The employer allowed employees to take the laptop home with them and permitted them to use the laptops for incidental personal use. However, the employer's policy made it clear that the school owned all the information on the laptop. The court concluded that the teacher had a reasonable expectation of privacy in the laptop but those expectations were diminished by the school's policies and practices and the fact that the school owned the laptop.

The decision in *Cole* concerns the exclusion of evidence under the *Canadian Charter of Rights and Freedoms*, and says little about what privacy rights employees have in work-issued devices under Canada's privacy statutes, like FIPPA. A recent decision of the Alberta OIPC provides some guidance.

In *Order P2013-03; Project Porchlight*, [2013] A.I.P.C.D. No 38, the complainant alleged that his employer contravened the Alberta *Personal Information Protection* Act, which regulates private employers in Alberta, by tracing personal phone calls he made using a work-issued Blackberry. Shortly before the parties' employment relationship ended, the complainant attended a meeting at which he was chastised for using his Blackberry to make personal calls. The employer did not have a policy in place that prohibited personal use of the Blackberry, but gave evidence at the hearing that it verbally communicated that restriction to the complainant when it issued him the device. In investigating whether the complainant had made personal calls from the device, the employer had reviewed the complainant's call records and in some cases had called numbers which it suspected were not work-related.

The adjudicator found the information to be personal information because it revealed who his friends and family were and what interests he had. The adjudicator noted that in calling one of the numbers, the employer had inadvertently discovered very personal information about the complainant. The adjudicator also found that the information collected was not personal employee information within the meaning of the *PIPA*, which the employer could have lawfully collected, because there was no policy in place which prohibited the complainant from making personal calls. Therefore, the information was not reasonably required to manage the employment relationship and was personal information within the meaning of the *PIPA*.

The adjudicator acknowledged that it could be argued that the complainant voluntarily provided the telephone numbers because he was aware that they would appear on the invoices sent to his employer. However, he did not provide the personal information collected by his employer, because the employer only collected that information after dialing those numbers. The adjudicator concluded that the employer collected and used the Complainant's personal information in contravention of the *PIPA*.

Lastly, in a recent BC OIPC decision, Order F13-03; *Quesnel (City)*, [2013] B.C.I.P.C.D. No 16, in response to an information request for the Mayor's cellphone bills, the City refused to disclose the information contained under the "Number called," "To" and "From" headings of the bill. The adjudicator held that the City was obligated to refuse to disclose that information under section 22 of the *FIPPA* because it was personal information and its disclosure would constitute an unreasonable invasion of the Mayor's privacy.

In light of these decisions, local governments should be aware that employees and elected officials may have privacy rights in the information contained on work-issued devices. The scope of those rights depends on the local government's policy concerning such devices, or if none, on the conditions under which the devices were issued. Privacy rights will be diminished where policies prohibit personal use and clearly state that the local government retains all property rights in the device and information contained on it. Lastly, local governments should ensure that it has solid evidence that the policy is clearly communicated to employees and elected officials.

III. CONCLUSION

Workplace privacy issues arise in many different areas of the employment relationship and we have only addressed four in this paper. We expect that the courts, arbitrators and Human Rights Tribunal members will continue to balance an employer's right to manage its operations against an employee's individual privacy rights in situations where privacy is at issue. We also expect that there will be more decisions addressing privacy rights in relation to work-issued technology and devices. Therefore, local government employers must be mindful of their privacy obligations when collecting, using and disclosing personal information about employees. As well, local governments must have clear policies regarding the ownership of work-place technology and the information stored on such technology.

NOTES